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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re C.M. et al., Persons Coming Under the Juvenile Court Law.	
MARIN COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. A.M. et al., Defendants and Appellants.	A154335 (Marin County Super. Ct. Nos. JV26455A, JV26456A, JV26457A)

A.M. (Mother) and S.N. (Father) appeal from orders of the juvenile court denying them reunification services with respect to their three children pursuant to section 361.5, subdivisions (b)(2) and (c)(1), of the Welfare and Institutions Code.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the parents of three children, H.M., Ha.M., and C.M., who are the subjects of this appeal. Mother has two other children, L.M. and A.M, by another person. Prior to the dependency proceedings at issue, Mother had primary custody of all five children.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

On May 12, 2017, the children came to the attention of the Marin County Department of Health and Human Services Department (Department) after the Department received a report that police found four-year-old A.M. crying without supervision while sitting on the front steps of Mother's home. The Department was alerted that the house was dirty and in disarray. In conducting a records check, the Department discovered that it had received 11 referrals concerning the family in 2017, and that the police had responded to Mother's home 10 times in 2017. These referrals and visits stemmed from reported concerns that the children were, among other things, unclean, not being adequately supervised, and not receiving treatment for their various mental health and behavioral issues. Department employees went to Mother's home the same day and again found A.M. outside and unsupervised. Department employees also observed the house was filthy, and the children were dirty.

Several days later, the Department filed dependency petitions pursuant to section 300, subdivision (b)(1), recommending Mother engage in services to ensure the children's wellbeing while the children remain in Mother's home.[2] At the hearing on these initial petitions, the juvenile court ordered family maintenance services be provided for Mother and Father.

In July 2017, the Department filed subsequent dependency petitions pursuant to section 342. The subsequent petitions alleged there was substantial risk that H.M., Ha.M., and C.M. would suffer serious physical harm or illness because Mother and Father suffered from mental illnesses that rendered them unable to provide regular care to the three children. Since the events in May, Mother's home remained filthy and unsanitary, and the children unkempt. Further, necessary dental treatment for the

[2] Although L.M. and A.M. were also named in the dependency petitions, they are not subjects of this appeal. This statement of facts focuses on the dependency proceedings insofar as they concern H.M., Ha.M., and C.M.

children had not been undertaken, and the children had missed appointments for mental health and behavioral services.

The Department filed a detention report indicating its ongoing concerns about Mother's neglect of the children's needs despite the Department's provision of "substantial services" since May. The Department also voiced concerns about Father, who reported having a long history of mental health issues. Father had missed the hearing on the initial petition because he had been committed pursuant to section 5150, and said he had not taken his prescribed medications for most of the last two years.

In July 2017, the juvenile court detained the children and ordered that both Mother and Father be provided parenting education and mental health services pending further proceedings. In September 2017, pursuant to a settlement agreement, the juvenile court sustained a first amended section 300 petition, which had been filed September 8, 2017.

In January 2018, the Department filed its disposition report recommending, in part, that the juvenile court bypass reunification services for Mother and Father pursuant to section 361.5, subdivision (b). The report indicated the family's "main problem requiring intervention" was both parents' longstanding untreated mental illnesses. In support of its bypass request, the Department referenced psychological reports authored by two licensed psychologists, Dr. Main and Dr. Shelley, in October and November 2017, and December respectively.

At the disposition hearing, the evidence presented to the juvenile court included the expert testimony of Dr. Main and Dr. Shelley and their reports. In March 2018, the juvenile court entered its disposition orders. As relevant here, it denied reunification services to both parents on the grounds they both suffer from mental disorders that render them "incapable of utilizing services to become capable of adequately caring for the children within the timeframe for reunification." Father and Mother now appeal from the juvenile court's orders denying them reunification services.

DISCUSSION

A. Governing Law and Standard of Review

As a general rule, when a child is removed from parental custody, the juvenile court is required to provide reunification services to "the child and the child's mother and statutorily presumed father . . . ." (§ 361.5, subd. (a).) Section 361.5, subdivision (b)(2), allows the juvenile court to "bypass" providing such reunification services if the court finds, by clear and convincing evidence, "[t]hat the parent . . . is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services." " 'Mental disability' in this context means 'that a parent or parents suffer a mental incapacity or disorder that renders the parent or parents unable to care for and control the child adequately.' " (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880, quoting Fam. Code, § 7827, subd. (a).) Section 361.5, subdivision (c)(1), further provides: "When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a)."[3]

The analysis under subdivisions (b)(2) and (c)(1) of section 361.5 has been laid out as follows: "(1) Does the parent suffer from a mental disability as described in [Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family

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[3] H.M., Ha.M., and C.M. were all older than three years of age while these dependency proceedings were ongoing. For children older than three on the date of removal from their parents, reunification services must be provided starting with the dispositional hearing and ending 12 months after the date the child entered foster care. (§ 361.5, subd. (a)(1)(A); § 361.49 ["[A] child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian"].)

Code]? [¶] (2) If so, does such disability render the parent incapable of utilizing reunification services? If the answer to this question is yes, reunification may be denied under section 361.5, subdivision (b)(2). [¶] (3) However, if such disability does not render the parent incapable of utilizing reunification services, does it nevertheless make it unlikely the parent will be capable of learning from reunification services to adequately care for the child within [the statutory time frame]? If the answer to this question is yes, reunification may be denied under section 361.5, subdivision (c)." (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 843 (*Rebecca H.*).)

Case law has incorporated into section 361.5, subdivision (b)(2), the requirement set out in Family Code section 7827, subdivision (c), that a finding of mental disability be supported by "the evidence of any two experts," such as licensed psychologists meeting certain educational and experience requirements. (*In re C.C.* (2003) 111 Cal.App.4th 76, 83.) That said, "there is no requirement that both experts must agree a parent is unlikely to benefit from services before the court may deny the parent services. Instead, the statute requires a showing only of evidence proffered by both experts regarding a parent's mental disability, evidence from which the court then can make inferences and base its findings." (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474 (*Curtis F.*).)

We determine the propriety of the juvenile court's denial of reunification services using a substantial evidence test. (*Curtis F., supra*, 80 Cal.App.4th at p. 474.) "In making this determination, we must decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence." (*Ibid*.)

B. The Denial of Reunification Services Due to Father's Mental Disability

Father does not contest that the record contains sufficient evidence from two qualified experts establishing that he has a qualifying mental disability. (§ 361.5, subd. (b)(2).) He acknowledges he has a longstanding history of mental health issues and has been diagnosed with Bipolar Disorder and Schizophrenia. Father does, however,

contend there was insufficient evidence that he suffered from a mental disability rendering him incapable of utilizing reunification services. We disagree and find substantial evidence supporting the trial court's decision to bypass reunification services pursuant to section 361.5, subdivisions (b)(2) and (c)(1).

Two mental health professionals, Dr. Main and Dr. Shelley, evaluated Father and described how his mental disability and resulting myriad symptoms have impaired his ability to safely and adequately care for his children. Both doctors testified concerning Father's failure to regularly comply with treatment for his mental illnesses, and his lack of insight into his mental health issues. Both also testified that, even with the provision of services, Father would not be capable of adequately caring for the children within the statutory time frame. The testimony of these experts was reasonable, credible, and of solid value, and together with their reports amply support the juvenile court's conclusion that Father was incapable of utilizing services to become capable of adequately caring for the children within the statutory timeframe. (*Curtis F.*, *supra*, 80 Cal.App.4th at p. 474.)

Father argues Dr. Main's finding of no expectation of improvement now or in the future was based on the flawed premise that Father failed to utilize family reunification services. Although Father concedes he received mental health services, he specifically argues the Department did not refer him to a parenting class as the juvenile court ordered. This argument is unpersuasive. As already noted, Dr. Main's report and her testimony adequately support the juvenile court's conclusion that, even with the provision of services such as a parenting class, Father was unlikely to be capable of caring for his children within the allotted time because of his mental disability and long history of non-compliance with treatment.

We have examined Father's remaining arguments, which are based largely on inferences he draws from certain evidence in the record or on actions he complains were never undertaken by the Department or others. We find them unavailing. At bottom,

substantial evidence supports the juvenile court's denial of services to Father under section 361.5, subdivisions (b)(2) and (c)(1).

C. The Denial of Reunification Services Due to Mother's Mental Disability

As with Father, Mother does not contest that the record contains substantial evidence from two qualified experts establishing that she has a qualifying mental disability. (§ 361.5, subd. (b)(2).) As the evidence reflects, Mother suffers from mental illness and has been diagnosed with schizoaffective disorder. Mother, however, argues there was insufficient evidence she was unlikely to be capable of adequately caring for the children within the time allowed for reunification if provided with family reunification services. We disagree.

Dr. Main and Dr. Shelley evaluated Mother and described how her mental disability significantly impairs her ability to properly care for her children. Both doctors testified Mother had been provided numerous services, yet she still lacked insight into her need to take medication and to participate in therapy, and she still was not medication compliant. Dr. Main concluded unequivocally there were no services that could enable Mother to resume parenting responsibilities within the statutory time period. Dr. Shelley's testimony reflected the same conclusion.

Mother claims that Dr. Shelley believed reunification could be viable within the reunification period if Mother were provided various services, therefore there was insufficient evidence to support the court's decision to bypass services. However, as Mother acknowledges, case law holds "there is no requirement that both experts must agree a parent is unlikely to benefit from services before the court may deny the parent services. Instead, the statute requires a showing only of evidence proffered by both experts regarding a parent's mental disability, evidence from which the court then can

make inferences and base its findings."[4] (*Curtis F.*, *supra*, 80 Cal.App.4th at p. 474.) Here, Dr. Shelley indicated Mother would require a large number of services to be in place and sustained "for a long time" to make reunification viable. Given this qualification, and considering the record—which established the Department had already provided Mother a plethora of services in this particular case prior to the dispositional hearing—we conclude substantial evidence supported the juvenile court's determination that, even with more services, Mother was unlikely to be capable of adequately caring for the children within the statutory time limits.

Mother challenges Dr. Main's testimony that she refused to take medication to treat her mental health issues, asserting the evidence merely showed she sometimes forgot to take her medication. She also argues that by the time of the disposition hearing, her condition had improved, she had begun taking medication and attending therapy, and she acknowledged her mental health issues. These arguments, however, essentially ask us to reweigh evidence, which we cannot do. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)

Finally, Mother argues that reversal of the bypass orders pertaining to Ha.M. and C.M. is required because the juvenile court wrongly believed it had no discretion to order reunification services. Pointing to the desire expressed by Ha.M. and C.M. for Mother to receive reunification services and to the juvenile court's own statements that Ha.M. and C.M. might benefit from such services, Mother claims the juvenile court likely would have exercised its discretion and ordered family reunification services for her with

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[4] Mother asks us to adopt the view of the dissenting justice in *Curtis F.*, that two qualified experts must agree not only that the parent suffers a mental disability, but also that the parent is incapable of utilizing services to become able to adequately care for the children within the reunification period. (*Curtis F.*, *supra*, 80 Cal.App.4th at p. 475, dis. opn. of Sims, J.) We decline to do so. As written, section 361.5 does not graft the expert evidence requirement of Family Code section 7827, subdivision (c), onto section 361.5, subdivision (c)(1).

respect to Ha.M. and C.M. had it known it could do so. However, as the Department contends, Mother's failure to raise this point below forfeits its review on appeal. (*In re T.G.* (2013) 215 Cal.App.4th 1, 14 ["In dependency litigation, '[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court' "].) Mother cites no authority that persuades us to disregard her forfeiture.

The juvenile court appropriately denied Mother reunification services under section 361.5, subdivisions (b)(2) and (c)(1).

DISPOSITION

The orders of the juvenile court are affirmed.

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Fujisaki, J.

WE CONCUR:

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Siggins, P.J.

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Petrou, J.

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